

# CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 250

October 30, 1959

## CORPORATE REORGANIZATION – APPLICABILITY OF SECTION 23251(c) TO A TRANSACTION TO WHICH SECTION 24504(b)(2) APPLIES

### Syllabus:

The statute prohibits a reorganization under Section 23251(c) when the stock was acquired in a transaction to which Section 24504(b)(2) applied.

Corporation A purchased 98% of the stock of Corporation B during a five month period in 1956. Three months later Corporation B was merged into Corporation A pursuant to the corporate merger laws of state X. The B stock held by Corporation A was cancelled and the remaining shareholders of Corporation B received A stock in exchange for their B stock.

Prior to the codification of the Kimbell-Diamond rule the Board of Equalization had concluded that if a transaction was essentially a purchase of assets, there was no reorganization under Section 23251. Appeal of Andrews Motor Car Co., decided May 9, 1954. This conclusion was based upon the theory that there was no continuity of ownership.

Based upon the same reasoning it was subsequently decided in Legal Ruling 181 that if Section 24504(b)(2) (the Kimbell-Diamond codification) applied in establishing basis, there was no reorganization under Section 23251(d). That section was subsequently amended in 1957 to expressly exclude such acquisitions from its application.

The same conclusion is reached in the instant case. As in both prior cases there is again almost a complete lack of continuity of interest on the part of the former stockholders of taxpayer. Since after merger the business was not substantially owned by the same interests, there was no reorganization. The substance of the manner of acquisition of the assets (purchase) controls over the mere form (merger).